

June 29, 2012

Barbara Drudge
Interim Executive Director
Board of Towing and Recovery Operators
c/o Department of Motor Vehicles
Post Office Box 27412
Richmond, Virginia 23269-0001

Re: Emergency Regulations Regarding Operator Fees

Dear Ms. Drudge:

You have asked for a letter of assurance from this Office that the Board of Towing and Recovery Operators (BTRO) has statutory authority to amend the existing regulations (via an emergency regulation) governing operator licensing fees, 24 VAC27-30-20. The proposed changes, in essence, will enable the BTRO to refund part of the operator licensing fees paid to them over the final 6 months of 2012 to prevent an inequitable situation from occurring when those licenses issued during those months expire on January 1, 2013. These changes are being proposed due to the elimination of the BTRO on January 1, 2013 and the fact that operators will no longer be licensed as of January 1, 2013.

With regard to your request, it is my opinion that BTRO has both the statutory authority and implied authority to promulgate regulations governing operator licensing fees pursuant to the provisions of Va. Code § 46.2-2809 (general authority to adopt regulations), and § 46.2-2816 (specific authority to set licensing fees). In addition, the fees are currently set out in BTRO regulation 24 VAC27-30-20, and this is simply a modification to that regulation. Because the authority to promulgate regulations pursuant to each of those Code sections is permissive rather than mandatory, such authority, by implication, includes the authority to modify or amend or repeal such regulations as have been promulgated thereunder. Therefore, I believe that BTRO can amend the existing regulations. I also believe that BTRO has demonstrated an emergent situation as it would apply to Va. Code § 2.2-4011 to allow BTRO to seek out an emergency regulation.

Therefore, as discussed previously, this letter confirms that the Board of Towing and Recovery Operators has statutory authority pursuant to Virginia Code §2.2- 4011 and §46.2-2809 to promulgate the emergency regulations as proposed.

Sincerely,

Janet L. Westbrook
Assistant Attorney General